IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1950 of 1988

with

SPECIAL CIVIL APPLICATION No 1951 of 1988

and

SPECIAL CIVIL APPLICATION No 1952 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJSRST ELECTRICITY BOARD

Versus

SA GHADIYALI

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Appearance:

1. Special Civil Application No. 1950 & 1952 of 1988
   MR MD PANDYA for Petitioner No. 1
   MR DS VASAVADA for Respondent No. 1
2. Special Civil Application No. 1951 of 1988
   MR MD PANDYA for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/09/2004

ORAL JUDGEMENT

In the present group of petitions, a common award of the Industrial Tribunal dated 28th July 1987 is challenged by the Gujarat Electricity Board.

2. The facts leading to the present petitions, briefly stated, are that each of the workmen in respective petitions was employed by the petitioner, Gujarat Electricity Board (hereinafter referred to as "the Board") working in the clerical cadre. Respondent in Special Civil Application No.1950 of 1988 had filed reference (IT) No.790/83 challenging the order dated 19.7.75 absorbing him as Senior Clerk and had also prayed for continuation of the benefits of the higher grade. Respondent in Special Civil Application No.1951/88 had filed reference (IT) No.790/81. She had requested for cancellation of the order dated 7.11.75 by which the benefit of the higher grade granted to her was withdrawn. Respondent in Special Civil Application No.1952 of 1988 had filed reference (IT) No.346/83 and had requested for cancellation of the order dated 19.7.75 absorbing her as Senior Assistant and also for continuation of the benefits of the higher grade.

3. It is not in dispute that the respective respondents was granted the benefits of higher grade pursuant to G.S.O. 247 dated 22.10.73. The petitioner Board had issued the said standing order dated 22.10.73 in which it was, inter alia, provided that an employee who has completed nine years of service in the same cadre/post in a particular pay-scale and who has not got promotion for no fault of his own on 1.8.72 for want of clear vacancy or those who complete nine years service in the same cadre or post in the same scale after 1.8.72 shall be entitled to the promotional scale of the next higher post from 1.8.72 or from the date following the date on which he completes nine years service in the same cadre or post as the case may be. The said higher scale on stagnation in the same pay-scale for a period upward of nine years was to be granted subject to certain conditions specified in the said G.S.O. One of the conditions was that the employee should otherwise be fit for promotion on the basis of his overall performance. It is also provided that he should have passed necessary

examinations/speed test, as the case may be, prescribed by the Board for the purpose of securing promotion. One important condition was that an employee who receives benefits of this rule will have to give an undertaking in writing that he shall on his absorption against a regular post, join the post at the place of his posting. If the employee refuses to do so, he shall forfeit the benefit of the rule and he shall stand reverted in the original lower grade and he shall draw the pay which he would have drawn had he not been given the benefit of the rule. Condition (vii) of the G.S.O.247 reads as under:

> "(vii) Each employee who takes the benefit of this rule will have to give an undertaking in writing that he shall on his absorption against a regular post join the post at the place of his posting. On his refusal to do so he shall forfeit the benefit of this rule and he shall stand reverted to the original lower grade and he shall draw pay which he would have drawn had he not been given the benefit of the rule. In case of an employee who is reverted to a lower post because he does not agree to join the place of posting, there should be no recovery of the amounts already paid."

4. It is not in dispute that the workmen concerned had received the benefits of the said G.S.O. for which they had given necessary undertaking as mentioned above. In the said undertaking, it was once again clearly mentioned that the workman has gone through the provisions of G.S.O. 247 dated 22.10.73 and he agrees to the terms and conditions stated therein. It was further undertaken that on absorption against the regular post, the workman shall join the post at the place of posting and on refusal to do so, he shall forfeit the benefits under the aforesaid rule and shall stand reverted to the original lower grade and shall draw pay which he would have drawn had he not been given the benefits of the rule.

5. It appears that after receiving the benefits of the said circular and the consequent higher pay-scale, the employees were offered promotions on regular basis on different dates by different orders. The employees, however, for personal reasons declined the promotions and on account of this action of the employees, the petitioner was prompted to cancel the higher pay fixation pursuant to G.S.O. 247 by different orders. It was this action of the petitioner which came to be challenged by the respective respondents by filing different references

as mentioned above before the Industrial Tribunal, Ahmedabad. The Industrial Tribunal, finding that the references involved identical questions of law and fact consolidated the proceedings and disposed of the same by the impugned award dated 28th July 1987. The Industrial Tribunal was pleased to allow the references of the workmen and directed the petitioner to continue to grant the benefits to the workmen of the higher grade till they were eligible to be absorbed on the higher post strictly according to their seniority. It was further provided that in case they are eligible to be absorbed in the higher post according to seniority and they refuse the promotions, they will not be eligible to the benefits of the higher grade from the date of such refusal. The said order of the Tribunal was on the basis of the conclusion of the Tribunal that the employees were offered promotion out of turn and the petitioner had failed to establish that the promotions offered to the workmen were in their turn strictly according to their seniority. The Tribunal appears to be of the view that the benefits of higher grade could not have been withdrawn until the workmen had refused promotions which were offered to them strictly according to seniority.

6. The question, therefore, that is required to be considered is whether the petitioner-Board was justified in withdrawing the benefits of higher grade given to the respective respondents or whether the Tribunal was correct in quashing the action of the petitioner and directing that the workmen should continue to enjoy the benefits of the higher grade till they are eligible to be absorbed in the higher post strictly according to their seniority.

7. In the service jurisprudence, employers i.e. Government or Semi-Government Corporations coming out with schemes and circulars to obviate the difficulties of the employees who are unable to get promotion on account of paucity of vacancies is a well-known phenomena. The entire philosophy and purpose behind introduction of such schemes is to ensure that such employees who have put in long number of years of service without receiving any promotions on account of non-availability of vacancies in the higher cadre and who are otherwise fit for promotion should be granted the benefits of higher grade irrespective of availability of the vacancies. In the result, such employees receive benefits of the higher grade, but continue to discharge duties of the lower post. The underlying idea being that the employees who are working otherwise honestly and competently should not be made to frustrate for want of promotional avenues. In

any service regulations, the claim of an employee to secure a particular pay-scale must flow from the rules and regulations. If an employee is discharging duties on a particular post, he would be entitled to the salary attached to the said post which would be fixed according to the well laid down rules and regulations and would be as per the pay-scale prescribed for such a post. If there is any relaxation or higher benefit to be granted to such an employee, it must be based on some rule or regulation or circular of the Government or Semi-Government Corporation, as the case may be. The claim for higher scale, therefore, must flow from some authorization in the form of rules, regulations or circulars. If an employee seeks benefits of such a circular or rule or regulation, the same must be examined strictly within the four corners of such rule, regulation or circular. If there is any condition for grant of such benefits, the condition must be strictly followed. In the present case, as narrated above, G.S.O.247 dated 22nd October 1973 clearly provided for higher grade of pay to those employees who are otherwise found fit for promotion, but have stagnated in the same scale for more than nine years, on certain conditions. The conditions laid down therein must be strictly followed and there cannot be any waiver or relaxation of such conditions. As mentioned above, one of the prime conditions for grant of such higher scale was that the employee who avails the benefits of the rule would have to give an undertaking that on absorption against a regular post, he will join the post at the place of posting and on refusal to do so, he shall forfeit the benefits of the rule and he shall stand reverted in the original lower grade and shall draw the pay accordingly.

8. As mentioned above, the respondents had given such undertakings. But when the petitioner had actually offered absorption on the promotional post, the respondents admittedly refused the same on personal grounds. It may be open for the respondents to refuse promotion on any ground to avoid higher responsibility or to avoid transfer or wider transfer liability. But can the respondent insist on continuing to draw the pay-scale of the higher post while at the same time refuse to accept the promotion when the same is offered by the petitioner is the moot question. No where has it been stated in the G.S.O. 247 or in the undertaking given by the respondents that adverse consequence of reduction of the pay-scale would follow only in case where the refusal to accept the promotion is against the offer of promotion made strictly according to the seniority. I do not find any such requirement either in G.S.O.247 or in the

undertakings given by the respondents-workmen. Condition No.(vii) of G.S.O. 247 and the undertaking by the respective workmen pursuant thereto, in my view are amply clear and the only possible interpretation of the same is that as and when absorption on regular higher post is offered to the workman, he can refuse the same only on the peril of forfeiture of the higher pay fixation. In my opinion, it is not possible for the respondents to suggest that they are entitled to receive the higher pay-scale even while refusing to shoulder the higher responsibility till the promotion is offered to them strictly according to seniority.

9. In conclusion, I find that the right of the respondents' to claim higher pay-scale can be based only on G.S.O. 247 dated 22nd October 1973 and if any of the material conditions of the said GSO are violated, which would result into forfeiture of the higher pay-scale, the result must follow. As discussed above, one of the conditions being that if the workman refused promotion when offered on regular absorption, would forfeit the benefits of the higher pay-scale and in the present case, admittedly such a situation having arisen, the respondents were not entitled to receive the said benefits any longer. The Industrial Tribunal, therefore, in my view, erred in law in allowing the references and directing that the petitioner should continue to pay the benefits to the respondents till promotion is offered strictly according to their turn in seniority.

10. In the case of State of Punjab v. Kuldip Singh, reported in AIR 2002 SC 2492, the Hon'ble Supreme Court has considered the effect of a circular which provided for grant of selection grade pay after completion of 15 years of service. It was observed that the claim of the employee for a selection grade post was to be dealt with only in accordance with the provisions of the circular and the High Court was clearly in error in issuing writ of mandamus against the Government circular which was binding on the parties. Following portion of the judgment can be reproduced herein:

> "9. From the contents of the two circulars it is manifest that an employee in order to be eligible to get the Selection Grade Pay has to complete 15 years of service and he is not to be given such scale of pay before he fulfills the said eligibility criteria. It follows as a consequence that no employee can claim selection grade pay before completing 15 years of service on any ground including the ground that an

employee junior to him has already been given such grade of pay. the position is further clarified in the circular issued in May, 1987 wherein it is provided that in the event of a junior employee getting the Selection Grade Pay earlier the post in the said grade may be kept vacant for the senior employee who may be given the benefit of the pay prescribed for the Selection Grade Pay only after he completes 15 years of service. The interest of the senior employee in such cases is safeguarded by making the provision in the inter se seniority between the two employees will remain undisturbed despite the junior employee getting the Selection Grade Pay earlier than the senior employee.

10. In view of the position communicated in the circulars the claim of an employee for a selection grade post was to be dealt with only in accordance with the provisions in the circular. The reasons stated in the judgment/order of the High Court that the respondents were entitled to the higher grade pay with effect from 1.1.1978 as employees junior to them were granted such pay by that date is extraneous and irrelevant for the purpose. The High Court overlooked the provisions in the circulars while directing the appellants herein to grant Selection Grade Pay to the respondents before they completed 15 years of service. The High Court was clearly in error in issuing a writ of mandamus apparently against the Government Circulars which was binding on the parties. The judgment/order passed by the High Court is, therefore, unsustainable. Accordingly, the appeal is allowed, the judgment/order is set aside and the writ petition filed by the respondents is dismissed. It is made clear that if the respondents have already drawn any amount in pursuance of the judgment/order of the High Court, the same will not be recovered from them. No costs."

11. The conclusion reached in this order would be supported by the observations of the Hon'ble Supreme Court in the abovementioned decision. In the result, the petitions succeed. The impugned award dated 28.7.87 of the Industrial Tribunal is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)